

News from Ed Markey

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Massachusetts Seventh District

CONTACT: Mark Bayer or Jeff Duncan

(202) 225-2836 or

Israel Klein

(202) 225-2816

SEC ACKNOWLEDGES 10 ENFORCEMENT INQUIRIES INTO ANALYSTS' CONFLICTS-OF-INTEREST

***Markey Urges Commission to Model Stronger
Analyst Rules on Merrill Settlement***

Washington, DC: Representative Ed Markey (D-MA), a senior member of the House Energy and Commerce Committee, today released materials indicating that the SEC has initiated ten enforcement inquiries into research analyst conflicts-of-interest over the past twelve months, while the National Association of Securities Dealers (NASD) and the New York Stock Exchange (NYSE) currently have a total of 37 pending enforcement inquiries into such conflicts. Following revelations of securities analyst conflicts-of-interest at Merrill Lynch during New York Attorney General Eliot Spitzer's investigation, Rep. Markey asked SEC Chairman Harvey Pitt to provide a report on SEC and securities industry self-regulatory organization (SRO) enforcement activities relating to analyst conflicts-of-interest. The materials Rep. Markey released today were provided in response to this inquiry.

"The SEC's response indicates that the Commission and the SROs are currently pursuing a significant number of cases involving potential securities laws violations by Wall Street research analysts. This is good news, since vigorous enforcement is an important deterrent to potential wrongdoers."

Markey added, "At the same time, it's essential that the rules themselves are tough enough to ensure analyst objectivity and provide investors confidence in the integrity of the recommendations they receive. I am pleased that in the Commission's response to my request for information, Chairman Pitt noted that further rulemaking or Commission action may be necessary to protect investors from misleading information distributed by research analysts," Rep. Markey said.

Highlights from the SEC report include the following information about Commission enforcement activities over the past 12 months:

- Ten inquiries relating to analyst conflicts-of-interest have been initiated by the Commission's Division of Enforcement. Some of the inquiries involve potential

conflicts with investment banking services, and some are multi-faceted inquiries that may include other violations of the securities laws.

- Of these inquiries, 4 relate to personal trading of analysts in the securities they cover.
- One inquiry relates to receipt by the analyst of undisclosed compensation by an issuer.
- Of the 10 inquiries, the SEC has issued formal orders of investigation in connection with 5. The Division of Enforcement is pursuing the other 5 without formal orders.
- There is one enforcement action pending that relates to possible conflicts-of-interest by research analysts. In December 2001, the Commission filed a complaint against Global Datatel, two of its former officers and a stock promoter who issued research reports on the company that contained baseless price projections at the same time the analyst received undisclosed compensation from the company.

The SEC report also includes the following information regarding the enforcement activities of the SROs over the last 12 months:

- The NASD has initiated 3 formal actions concerning research analyst conflicts-of-interest.
- In addition to these formal actions, the NASD has initiated 20 non-public investigations concerning analyst conflicts-of-interest.
- The NYSE has initiated 17 inquiries relating to analyst conflicts-of-interest.

When the SEC approved on May 8 the analyst conflicts-of-interest rules developed by the NASD and the NYSE, the Commission requested that the SROs prepare a report on the operation and effectiveness of the new rules and submit the report, along with any recommendations or changes, to the Commission within one year of the rules' implementation. The Commission also reported that it currently is conducting an investigation of research analyst conflicts-of-interest along with the NYSE, NASD, North American Securities Administrators Association and New York Attorney General Eliot Spitzer.

"Attorney General Spitzer's ongoing efforts to expose and help resolve conflicts-of-interest at Merrill Lynch and other full-service broker-dealers are helping to restore investor confidence, which is the *sine qua non* of smooth, efficient securities markets. In the area of analyst compensation in particular, the settlement that Merrill Lynch reached with Eliot Spitzer's office goes beyond the requirements in the rules approved by the SEC earlier this month. As it evaluates whether further action is needed to address analyst conflicts, I urge the Commission to set its sights on the higher standards established by Merrill Lynch's agreement with the New York Attorney General," Rep. Markey added.

For Rep. Markey's correspondence with the SEC, please refer to our website at www.house.gov/markey.